IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

OP.No. 26926 of 2000(E)

PETITIONER:

K.S.MADHAVAN NAIR, S/O. SHANKARAN NAIR,
AGED 60 YEARS, PEON (RETD),
K.S.R.T.C., RESIDING AT VELLIPPANA VEEDU,
AMBALAMEDU P.O., TRIPUNITHURA, ERNAKULAM.

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENTS:
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1. THE KERALA STATE ROAD TRANSPORT CORPORATION,
TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM
REP.BY ITS MANAGING DIRECTOR.

2 .THE EXECUTIVE DIRECTOR (VIGILANCE &
STATISTICS), K.S.R.T.C, TRANSPORT BHAVAN, FORT,
THIRUVANANTHAPURAM.

3. THE DISTRICT TRANSPORT OFFICER,
K.S.R.T.C, ERNAKULAM.

BY ADV. SRI.JOSE THETTAYIL, SC, KSRTC
SRI.P.PARAMESWARAN NAIR, SC, KSRTC
SRI.K.PRABHAKARAN, SC, K.S.R.T.C.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON 10.07.2007 THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.26926/2000

APPENDIX

PETITIONER'S EXHIBIT

EXT.P1:- COPY OF THE PENSION PAYMENT ORDER NO.PLB1-09251/96 DT. 29.2.96 ISSUED BY THE ASSISTANT ACCOUNTS OFFICER (FUNDS).

EXT.P2:- COPY OF THE JUDGMENT DT. 28.1.97 M.F.A. NO.993/1988 ISSUED BY THIS HONARABLE COURT.

EXT.P3:- COPY OF THE GRATUITY PAYMENT ORDER NO.IA1/P1/98-99 DT. 30.9.98 ISSUED BY THE DEPUTY CHIEF ACCOUNTS OFFICER.

EXT.P4:- COPY OF THE LETTER NO.IA1/P1/98-99 DT. 30.9.98 ISSUED BY THE DO.

EXT.P5:- COPY OF THE APPEAL DT. 6.3.97 SUBMITTED BY THE PETITIONER.

EXT.P6:- COPY OF THE APPEAL DT. 12.11.99 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.

EXT.P7:- COPY OF THE ORDER NO./R.DIS. PLB1/09251/96 DT. 15.2.2000 ISSUED BY THE 1ST RESPONDENT.

EXT.P8:- COPY OF THE CLAUSE XXIX IN THE MEMORANDUM OF SETTLEMENT DT. 28.12.1990 ENTERED INTO BETWEEN KSRTC MANAGEMENT AND THE TRADE UNIONS.

/TRUE COPY/

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T.R. Ramachandran Nair, J.

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O.P.NO.26926 of 2000-E

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Dated this the 10th day of July, 2007

JUDGMENT

The petitioner herein is aggrieved by the action of the respondents in effecting recovery of various amounts from the D.C.R.G. and Commuted Value of Pension, as per Exts.P3, P4 and P7. He was an employee under the first respondent Corporation as a driver. While operating service from Trichur to Palakkad on 10.10. 1986, the bus driven by him met with an accident with a private bus. The petitioner suffered severe head injuries which forced him to seek a category change to the post of peon. This was allowed by the Corporation with effect from 24.6.1987 as ordered in Order NO.PLC.3/40157 dated 16.6.1987. The concurrence of the Public Service Commission was there for passing the said order. The petitioner has retired from service on 29.2.1996 also.

2. Pursuant to the accident, he was involved in a criminal case, C.C.No.64/1987 before the Judicial First Class Magistrate's Court, Alathur and by judgment dated 30.9.1987 he was acquitted of the charges. Apart from that, there was a disciplinary proceedings initiated against him, in which the disciplinary authority had ordered recovery of Rs.12,495/-

towards cost of damages and he had filed an appeal challenging the same. Further, there was a claim for compensation before the Motor Accidents Claims Tribunal, Palakkad in O.P.(MV) No.188/1997. Along with the petitioner, the driver of the other bus and the insurance company as well as the owners were parties. In the award, it was held that the accident occurred due to composite negligence of the drivers of both vehicles. The petitioner challenged the judgment in M.F.A. No.993/1988 which was allowed as per Ext.P2 judgment. It was held that the finding of the Tribunal that the accident occurred due to the composite negligence of both the drivers, was clearly erroneous. It was held that the accident occurred purely due to the negligence of the first respondent in the M.F.A.

3. In the Gratuity Payment Order dated 30.9.1998 a total amount of gratuity of Rs.15,075/- was shown, but an amount of Rs.5,103/- was noted as recovery of 1/3rd of M.A.C.T. - O.P.(MV) NO.67/1987 and the balance amount towards cost of damages. According to the petitioner, in the light of Ext.P2 judgment of this court, no recovery towards the M.A.C.T. award can be made. Apart from the said amount of D.C.R.G. sanctioned, he had been granted Commuted Value of Pension of an amount of Rs.25,490/- as per Ext.P4, but therein an amount of Rs.13,143/- is shown as recovery as excess payment due to change of category. It is submitted that this recovery has

been ordered without any notice to him. The petitioner challenged the same in O.P.No.9994/1999 and by judgment dated 9.4.1999 this court directed the competent authority to consider the appeals. The copy of the said appeals have been produced as Exts.P5 and P6. It is stated by the petitioner that his appeal as far as adjustment of the cost of damages, has been allowed by the first respondent and the amount has been refunded to him. But the first respondent has passed an order justifying the recovery of Rs.5,103/-, 1/3rd of the M.A.C.T. award and excess pay due to category change. Ext.P7 is the order thus passed which is challenged in this original petition.

4. The Corporation has filed a counter affidavit justifying the recoveries ordered.

5. Heard learned counsel for both parties.

6. In respect of the recovery towards the M.A.C.T. award, it is pointed out by learned counsel for the petitioner that in view of Ext.P2 judgment of this court, the petitioner has been fully exonerated from the negligence attributed in the accident and the driver of the other bus was found to be negligent and hence no recovery can be effected against him. A reading of Ext.P2 judgment shows that this court found that the accident occurred due to the rash and negligent driving of the first respondent in the M.F.A. Learned counsel for the Corporation also agreed that there is a clear

finding in Ext.P2 to that effect. Hence, I am of the view that the action of the respondents cannot be justified in directing recovery of Rs.5,103/- which represents 1/3rd of the M.A.C.T. award from the D.C.R.G. sanctioned to the petitioner.

7. Then the other item of recovery is the amount of Rs.13,143/- which is sought to be recovered as excess pay drawn by him while working as Peon. The facts show that category change was allowed and he was permitted to work as Peon with effect from 24.6.1987 which was concurred by the Public Service Commission. The respondents have no case that when this category change was allowed, there was any order directing refixation of pay. It is evident from Ext.P4 that only after retirement, it is shown as a liability to be recovered from the commuted value of pension. It is seen from the counter affidavit filed by the Corporation also that change of category was allowed as above with effect from 24.6.1987 which was concurred by the P.S.C. as per letter dated 8.2.1990. The respondents have no case that simultaneously or along with the order dated 16.6.1987 there was any refixation of his pay. Therefore, admittedly while he was in service, there was no order passed by the competent authority refixing his pay.

8. Learned counsel for the petitioner has also argued based on Ext.P8 which is a copy of the memorandum of settlement dated 28.12.1990 entered

into between the management of the Corporation and the trade unions that the category change is allowed to post on equivalent scales and that the last pay ought to have been protected. A reading of clause XXIX of Ext.P8 will support the said argument. Therefore, category change is contemplated to equivalent scale in entry grade to those employees who are disabled consequent on accidents while on duty. Therefore, it is a benefit granted to employees who become disabled while on duty and a beneficial construction also has to be made.

9. Apart from that, while he was in service, no proceedings had been issued refixing his pay. The petitioner was never told about any such adverse refixation also prior to his retirement or at any time before Ext.P4 was issued. Evidently, the steps taken after retirement has deprived him of his right to challenge such refixation, if attempted to be done, while he was in service. What is done by the respondents now is to effect recovery from the amounts sanctioned towards Commuted Value of Pension as per Ext.P4 dated 30.9.1998, which is after his retirement on 29.2.1996. The petitioner is well in his rights in submitting that even this recovery was effected without complying with valid procedures prescribed. No notice was issued to him seeking explanation either before fixing the liability or before effecting recovery. It is also pointed out that the provisions of Kerala

Service Rules do not enable the respondents to recover any amount from the Commuted Value of Pension. Be that as it may, as the recovery is not under any competent proceedings, it does not survive in the eye of law. He was granted category change in the year 1987 and the attempted recovery is after 11 years. He was allowed to retire with all benefits at that time.

10. In view of the above, the recovery of Rs.13,143/- in Exts.P4 and P7 against the petitioner is illegal. Learned counsel for the petitioner relied upon a decision of a Division Bench of this court reported in **Badarudeen v. K.S.R.T.C. And another** (ILR 1999 (1) Ker. 1). The question whether under Note 3 to Rule 3 of Part III K.S.R., the liabilities sought to be recovered without issuing any notice for quantifying it, is illegal was considered. It was held in the above decision that the appellant therein had retired from service 31.5.1994 and the Corporation had not issued any notice quantifying the liability payable by the appellant. It was held that such recovery was not legal. The above principle applies to the facts of this case also. Herein also the recoveries have been effected in violation of the principles of natural justice.

11. For all these reasons, Exts.P4 and P7 are hereby quashed. The respondents are directed to disburse the amounts, viz., Rs.5,103/- as 1/3rd of the M.A.C.T. Award and Rs.13,143/- as excess pay, within six weeks from

the date of receipt of a copy of this judgment, with 6% interest from the date of Ext.P7, i.e. 15.2.2000.

The Original Petition is allowed as above. No costs.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P.NO.26926 of 2000-E

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JUDGMENT

10th July, 2007